JUDGMENT OF THE COURT

20 September 2001 *

In Case C-184/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal du travail de Nivelles (Belgium) for a preliminary ruling in the proceedings pending before that court between

Rudy Grzelczyk

and

Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve,

on the interpretation of Articles 6, 8 and 8a of the EC Treaty (now, after amendment, Articles 12 EC, 17 EC and 18 EC) and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ 1993 L 317, p. 59),

* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward (Rapporteur), P. Jann, L. Sevón, R. Schintgen and F. Macken, Judges,

Advocate General: S. Alber,

Registrar: D. Louterman-Hubeau, Head of Division,

after considering the written observations submitted on behalf of:

— the Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve, by B. Liétar, avocat,

— the Belgian Government, by A. Snoecx, acting as Agent, C. Doutrelepont and M. Uyttendaele, avocats,

— the Danish Government, by J. Molde, acting as Agent,

— the French Government, by K. Rispal-Bellanger and C. Bergeot, acting as Agents,

— the Portuguese Government, by L. Fernandes and A.C. Pedroso, acting as Agents,

— the United Kingdom Government, by R. Magrill, acting as Agent, P. Sales and J. Coppel, Barristers,

— the Council of the European Union, by E. Karlsson and F. Anton, acting as Agents,

— the Commission of the European Communities, by P. van Nuffel, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Belgian Government, represented by C. Doutrelepont, of the French Government, represented by C. Bergeot, of the United Kingdom Government, represented by K. Parker QC, of the Council, represented by E. Karlsson, and of the Commission, represented by M. Wolfcarius and D. Martin, acting as Agents, at the hearing on 20 June 2000,

after hearing the Opinion of the Advocate General at the sitting on 28 September 2000,

gives the following

Judgment

1 By judgment of 7 May 1999, received at the Court on 19 May 1999, the Tribunal du travail de Nivelles (Industrial Tribunal, Nivelles) referred to the Court for a

preliminary ruling under Article 234 EC two questions on the interpretation of Articles 6, 8 and 8a of the EC Treaty (now, after amendment, Articles 12 EC, 17 EC and 18 EC) and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ 1993 L 317, p. 59).

2 Those questions were raised in proceedings between Mr Rudy Grzelczyk and the Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve (Public Social Assistance Centre for Ottignies-Louvain-la-Neuve, hereinafter 'the CPAS') concerning the CPAS's decision to stop payment of the 'minimex', the minimum subsistence allowance (hereinafter referred to as 'the minimex').

Relevant Community legislation

3 The first paragraph of Article 6 of the Treaty provides:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

4 Article 8 of the Treaty provides:

'1. Citizenship of the Union is hereby established.

Every person holding the nationality of a Member State shall be a citizen of the Union.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.'

5 Article 8a of the Treaty is worded as follows:

'1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament.'

6 The fourth recital in the preamble to both Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26) and Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28) and the sixth recital in the preamble to Directive 93/96 — which essentially replaced Council Directive 90/366/EEC of 28 June 1990 on the right of residence for students (OJ 1990 L 180, p. 30) after it was annulled by the Court of Justice (Case C-295/90 *Parliament* v *Council* [1992] ECR I-4193) — state that beneficiaries of those directives must not become an unreasonable burden on the public finances of the host Member State.

7 According to Article 1 of Directive 93/96,

'In order to lay down conditions to facilitate the exercise of the right of residence and with a view to guaranteeing access to vocational training in a non-discriminatory manner for a national of a Member State who has been accepted to attend a vocational training course in another Member State, the Member States shall recognise the right of residence for any student who is a national of a Member State and who does not enjoy that right under other provisions of Community law, and for the student's spouse and their dependent children, where the student assures the relevant national authority, by means of a declaration or by such alternative means as the student may choose that are at least equivalent, that he has sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence, provided that the student is enrolled in a recognised educational establishment for the principal purpose of following a vocational training course there and that he is covered by sickness insurance in respect of all risks in the host Member State.'

Relevant national legislation

8 Article 1 of the Law of 7 August 1974 establishing the right to a minimum subsistence allowance (*Moniteur belge* of 18 September 1974, p. 11363) provides:

'1. Any Belgian having reached the age of majority, who is actually resident in Belgium and who does not have adequate resources and is not able to obtain them either by his own efforts or from other sources, shall be entitled to a minimum subsistence allowance.

The King shall determine the meaning of the words "actually resident".

The same entitlement is granted to minors treated as being of full age on account of marriage, and also to single persons who are responsible for one or more children.

2. The King may, by decree deliberated by the Council of Ministers, extend the application of this law, subject to such conditions as he shall set, to other categories of minors, and also to persons not possessing Belgian nationality.'

9 According to Article 1 of the Royal Decree of 27 March 1987 (*Moniteur belge* of 7 April 1987, p. 5068), which extends application of the Law of 7 August 1974 to persons not possessing Belgian nationality:

'The scope of the Law of 7 August 1974 establishing a right to a minimum subsistence allowance shall be extended to the following persons:

(i) those to whom Regulation (EEC) No 1612/68 of the Council of the European Communities of 15 October 1968 on the freedom of movement for workers within the Community applies;

(ii) stateless persons to whom the Convention on the Status of Stateless Persons, signed in New York on 28 September 1954 and approved by the Law of 12 May 1960 applies;

(iii) refugees within the meaning of Article 49 of the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and the expulsion of foreigners.'

The main proceedings and the questions referred for a preliminary ruling

10 In 1995 Mr Grzelczyk, a French national, began a course of university studies in physical education at the Catholic University of Louvain-la-Neuve and for that purpose took up residence in Belgium. During the first three years of his studies, he defrayed his own costs of maintenance, accommodation and studies by taking on various minor jobs and by obtaining credit facilities.

11 At the beginning of his fourth and final year of study, he applied to the CPAS for payment of the minimex. In its report, the CPAS observed that Mr Grzelczyk had worked hard to finance his studies, but that his final academic year, involving the writing of a dissertation and the completion of a qualifying period of practical training, would be more demanding than the previous years. For those reasons, by decision of 16 October 1998, the CPAS granted Mr Grzelczyk the minimex, calculated at the 'single' rate, for the period from 5 October 1998 to 30 June 1999.

12 The CPAS applied to the Belgian State authorities for reimbursement of the minimex paid to Mr Grzelczyk. The competent federal minister, however, refused to reimburse the CPAS on the ground that the legal requirements for the grant of the minimex, and in particular the nationality requirement, had not been satisfied, whereupon the CPAS withdrew the minimex from Mr Grzelczyk with effect from 1 January 1999, for the stated reason that 'the person concerned is an EEC national enrolled as a student'.

13 Mr Grzelczyk challenged that decision before the Labour Tribunal, Nivelles. The tribunal observed that, according to the case-law of the Court of Justice, the minimex is a social advantage within the meaning of Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968 (II), p. 47)

and that, under Belgian law, entitlement to the minimex had been extended to persons to whom Regulation No 1612/68 applies. It pointed out, however, that Mr Grzelczyk did not, in the CPAS's view, satisfy all the requirements for claiming the minimex under its extended scope since his student status prevented him from being regarded as a worker and his residence in Belgium was not attributable to operation of the principle of free movement of workers. The Labour Tribunal also referred to the judgment of the Court of Justice in Case C-85/96 *Martínez Sala* [1998] ECR I-2691 and queried whether the principles of European citizenship and non-discrimination precluded application of the national legislation at issue in the main proceedings.

14 In those circumstances, the Labour Tribunal, Nivelles, recognising the urgency of Mr Grzelczyk's situation, granted him a flat-rate allowance of BEF 20 000 per month for the period from 1 January 1999 to 30 June 1999 and stayed the proceedings in order to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is it contrary to Community law — more particularly the principles of European citizenship and of non-discrimination enshrined in Article 6 and 8 of the Treaty establishing the European Community — for entitlement to a non-contributory social benefit, such as that introduced by the Belgian Law of 7 August 1974 on the minimum subsistence allowance, to be granted only to nationals of the Member States to whom Regulation (EEC) No 1612/68 of 15 October 1968 applies and not to all citizens of the Union?

2. In the alternative, are Articles 6 and 8a of the Treaty and Directive 93/96 of 29 October 1993 on the right of residence for students to be interpreted to the effect that, after a student's right of residence has been acknowledged, he may subsequently be barred from entitlement to non-contributory social

benefits, such as the minimum subsistence allowance, payable by the host country, and, if so, is that exclusion general and definitive in nature?'

Preliminary remarks

15 The parties to the main proceedings, the Member States which have submitted observations and the Commission have all devoted a substantial part of their observations, both written and oral, to the question whether the fact that during the first three years of his studies Mr Grzelczyk took various paid jobs brings him within the scope of the Royal Decree of 27 March 1987 as a worker within the meaning of Community law.

16 However, it is clear from the national court's order for reference that it adopted the analysis of the CPAS that Mr Grzelczyk did not fulfil the criteria for treatment as a worker within the meaning of Community law. Against that factual and legal background the national court raises the question of the compatibility of the relevant Belgian legislation with Community law, and in particular with Articles 6, 8 and 8a of the Treaty.

17 That being so, the Court must answer its questions as they have been framed and within the limits set by the national court.

18 It is for the national court to determine, in the light, in particular, of the Opinion of the Advocate General, whether or not the facts and circumstances of the case are such as to permit Mr Grzelczyk to be regarded as a worker for the purposes of Community law.

The first question referred for a preliminary ruling

19 By its first question, the Belgian court asks essentially whether Articles 6 and 8 of the Treaty preclude entitlement to a non-contributory social benefit, such as the minimex, from being made conditional, in the case of nationals of Member States other than the host State where they are legally resident, on their falling within the scope of Regulation No 1612/68 when no such condition applies to nationals of the host Member State.

Observations submitted to the Court

20 The CPAS argues that, as Community law stands at present, it would be wrong to regard all citizens of the European Union as being entitled to claim non-contributory social benefits, such as the minimex. It is clear from the wording of the provision itself that Article 8a(1) of the Treaty does not have direct effect and that its implementation must always have due regard for the limits laid down in the Treaty and defined in secondary legislation. This includes, in particular, Directives 90/364, 90/365 and 93/96, which subject exercise of the freedom of movement to a requirement to demonstrate that the person concerned possesses sufficient resources and social security cover.

21 The Belgian and Danish Governments submit that the entry into force of the Treaty on European Union and the Treaty of Amsterdam does not affect that interpretation. Citizenship of the Union does not mean that Union citizens obtain rights that are new and more extensive than those already deriving from the

EC Treaty and secondary legislation. The principle of citizenship of the Union has no autonomous content, but is merely linked to the other provisions of the Treaty.

22 The French Government submits that the idea that the principle of equal treatment in the matter of social advantages should be extended to all citizens of the Union when at present it applies only to workers and members of their families would amount to establishing total equality between citizens of the Union established in a Member State and nationals of that State, which would be difficult to reconcile with rights attaching to nationality.

23 The Portuguese Government points out that, since the entry into force of the Treaty on European Union, nationals of the Member States are no longer regarded in Community law as being primarily economic factors in an essentially economic community. One consequence of the introduction of Union citizenship is that the limits and conditions which Community law imposes on the exercise of the right to freedom of movement and residence within the territory of the Member States should no longer be construed as envisaging a purely economic right arising from the EC Treaty but as being concerned only with those exceptions that are based on reasons of public policy, public security or public health. Furthermore, if from the time when the Treaty on European Union entered into force, nationals of the Member States acquired the status of citizen of the Union and ceased to be regarded as purely economic agents, it follows that the application of Regulation No 1612/68 ought also to be extended to all citizens of the Union, whether or not they are workers within the meaning of that regulation.

24 The United Kingdom Government, referring to the judgment in *Martínez Sala*, cited above, argues that, whilst Mr Grzelczyk is suffering discrimination on the grounds of his nationality, Article 6 of the EC Treaty does not apply to his situation because any discrimination against him falls outside the scope of the Treaty. Article 6 cannot have the effect of striking down limitations upon the scope of Regulation No 1612/68, whether read alone or together with Article 8 of the Treaty.

25 The Belgian Government adds that the applicant in the main proceedings is claiming the minimex whereas this type of funding falls outside the scope of Article 6 of the Treaty, of Article 126 of the EC Treaty (now Article 149 EC) and of Article 127 of the EC Treaty (now, after amendment, Article 150 EC). Funding such as the minimex is an instrument of social policy with no particular link with vocational training. As Community law stands at present, it is not within Community competence.

26 The Commission takes the view that Articles 6 and 8 of the Treaty must be interpreted as granting to every citizen of the Union the right not to suffer discrimination by a Member State on grounds of nationality, within the scope of application *ratione materiae* of the Treaty, provided that the Union citizen's situation has some relevant connection with the Member State concerned.

Findings of the Court

27 In order to place the legal problem raised by this case in its context, it should be recalled that, in Case 249/83 *Hoeckx* [1985] ECR 973, concerning an unemployed Dutch national returning to Belgium where she made a fresh application for the minimex, the Court held that a social benefit providing a general guarantee of a minimum subsistence allowance, such as that provided for by the Belgian Law of 7 August 1974, constitutes a social advantage within the meaning of Regulation No 1612/68.

28 At the time of the facts giving rise to *Hoeckx*, all Community nationals were entitled to the minimex, although nationals of Member States other than Belgium

had to satisfy the additional requirement of having actually resided in Belgium for at least five years immediately preceding the date on which the minimex was granted (see Article 1 of the Royal Decree of 8 January 1976, *Moniteur belge* of 13 January 1976, p. 311). It was the Royal Decree of 27 March 1987, which repealed the Royal Decree of 8 January 1976, which restricted entitlement to the minimex, in the case of nationals of other Member States, to persons to whom Regulation No 1612/68 applied. The residence condition, which had been amended in the meantime, was finally removed after infringement proceedings were brought by the Commission against the Kingdom of Belgium (Case C-326/90 *Commission* v *Belgium* [1992] ECR I-5517).

29 It is clear from the documents before the Court that a student of Belgian nationality, though not a worker within the meaning of Regulation No 1612/68, who found himself in exactly the same circumstances as Mr Grzelczyk would satisfy the conditions for obtaining the minimex. The fact that Mr Grzelczyk is not of Belgian nationality is the only bar to its being granted to him. It is not therefore in dispute that the case is one of discrimination solely on the ground of nationality.

30 Within the sphere of application of the Treaty, such discrimination is, in principle, prohibited by Article 6. In the present case, Article 6 must be read in conjunction with the provisions of the Treaty concerning citizenship of the Union in order to determine its sphere of application.

31 Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.

32 As the Court held in paragraph 63 of its judgment in *Martínez Sala*, cited above, a citizen of the European Union, lawfully resident in the territory of a host Member State, can rely on Article 6 of the Treaty in all situations which fall within the scope *ratione materiae* of Community law.

33 Those situations include those involving the exercise of the fundamental freedoms guaranteed by the Treaty and those involving the exercise of the right to move and reside freely in another Member State, as conferred by Article 8a of the Treaty (see Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, paragraphs 15 and 16).

34 It is true that, in paragraph 18 of its judgment in Case 197/86 *Brown* [1988] ECR 3205, the Court held that, at that stage in the development of Community law, assistance given to students for maintenance and training fell in principle outside the scope of the EEC Treaty for the purposes of Article 7 thereof (later Article 6 of the EC Treaty).

35 However, since *Brown*, the Treaty on European Union has introduced citizenship of the European Union into the EC Treaty and added to Title VIII of Part Three a new chapter 3 devoted to education and vocational training. There is nothing in the amended text of the Treaty to suggest that students who are citizens of the Union, when they move to another Member State to study there, lose the rights which the Treaty confers on citizens of the Union. Furthermore, since *Brown*, the Council has also adopted Directive 93/96, which provides that the Member States must grant right of residence to student nationals of a Member State who satisfy certain requirements.

36 The fact that a Union citizen pursues university studies in a Member State other than the State of which he is a national cannot, of itself, deprive him of the possibility of relying on the prohibition of all discrimination on grounds of nationality laid down in Article 6 of the Treaty.

37 As pointed out in paragraph 30 above, in the present case that prohibition must be read in conjunction with Article 8a(1) of the Treaty, which proclaims 'the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'.

38 As regards those limitations and conditions, it is clear from Article 1 of Directive 93/96 that Member States may require of students who are nationals of a different Member State and who wish to exercise the right of residence on their territory, first, that they satisfy the relevant national authority that they have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence, next, that they be enrolled in a recognised educational establishment for the principal purpose of following a vocational training course there and, lastly, that they be covered by sickness insurance in respect of all risks in the host Member State.

39 Article 3 of Directive 93/96 makes clear that the directive does not establish any right to payment of maintenance grants by the host Member State for students who benefit from the right of residence. On the other hand, there are no provisions in the directive that preclude those to whom it applies from receiving social security benefits.

40 As regards more specifically the question of resources, Article 1 of Directive 93/96 does not require resources of any specific amount, nor that they be evidenced by specific documents. The article refers merely to a declaration, or such alternative means as are at least equivalent, which enables the student to satisfy the national authority concerned that he has, for himself and, in relevant cases, for his spouse and dependent children, sufficient resources to avoid becoming a burden on the social assistance system of the host Member State

during their stay (see paragraph 44 of the judgment in Case C-424/98 *Commission* v *Italy* [2000] ECR I-4001).

41 In merely requiring such a declaration, Directive 93/96 differs from Directives 90/364 and 90/365, which do indicate the minimum level of income that persons wishing to avail themselves of those directives must have. That difference is explained by the special characteristics of student residence in comparison with that of persons to whom Directives 90/364 and 90/365 apply (see paragraph 45 of the judgment in *Commission* v *Italy*, cited above).

42 That interpretation does not, however, prevent a Member State from taking the view that a student who has recourse to social assistance no longer fulfils the conditions of his right of residence or from taking measures, within the limits imposed by Community law, either to withdraw his residence permit or not to renew it.

43 Nevertheless, in no case may such measures become the automatic consequence of a student who is a national of another Member State having recourse to the host Member State's social assistance system.

44 Whilst Article 4 of Directive 93/96 does indeed provide that the right of residence is to exist for as long as beneficiaries of that right fulfil the conditions laid down in Article 1, the sixth recital in the directive's preamble envisages that beneficiaries of the right of residence must not become an 'unreasonable' burden on the public finances of the host Member State. Directive 93/96, like Directives 90/364 and 90/365, thus accepts a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States, particularly if the difficulties which a beneficiary of the right of residence encounters are temporary.

45 Furthermore, a student's financial position may change with the passage of time for reasons beyond his control. The truthfulness of a student's declaration is therefore to be assessed only as at the time when it is made.

46 It follows from the foregoing that Articles 6 and 8 of the Treaty preclude entitlement to a non-contributory social benefit, such as the minimex, from being made conditional, in the case of nationals of Member States other than the host State where they are legally resident, on their falling within the scope of Regulation No 1612/68 when no such condition applies to nationals of the host Member State.

The second question referred for a preliminary ruling

47 In view of the answer given to the first question, and since the second question was put in the alternative, it is not necessary to reply to that question.

The temporal effects of the present judgment

48 In its written observations the Belgian Government asks the Court, in the event that it finds that a person such as the applicant in the main proceedings may receive the minimex, to limit in time the effects of the present judgment.

49 In support of that request, the Belgian Government states that the Court's judgment would have retroactive effects which would throw into doubt legal relations established in good faith and in accordance with secondary legislation. More specifically, it fears that systems of social allowances for students will be upset if secondary legislation is changed as a result of a new interpretation of Community law allowing students to rely on Articles 6 and 8 of the Treaty in circumstances such as those in the main proceedings. The principle of legal certainty therefore requires that the effects of the judgment be limited in time.

50 The Court has repeatedly held that an interpretation it gives to a provision of Community law clarifies and defines its meaning and scope only as it should have been understood and applied from the time of its entry into force (see Joined Cases C-367/93 to C-377/93 *Roders and Others* [1995] ECR I-2229, paragraph 42, and Case C-35/97 *Commission* v *France* [1998] ECR I-5325, paragraph 46).

51 It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict the possibility for any person concerned to rely upon a provision which it has interpreted with a view to calling into question legal relationships established in good faith (see, *inter alia*, Case C-104/98 *Buchner and Others* [2000] ECR I-3625, paragraph 39).

52 It is also settled in case-law that the financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effect of the ruling (see, in particular, *Buchner and Others*, paragraph 41).

53 The Court has taken that step only in quite specific circumstances, where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that both individuals and national authorities had been led into adopting practices which did not comply with Community law by reason of objective, significant uncertainty regarding the implications of Community provisions, to which the conduct of other Member States or the Commission may even have contributed (see, in particular, *Roders and Others*, cited above, paragraph 43).

54 In the present case, in support of its request for limitation of the temporal effects of the present judgment, the Belgian Government has produced no evidence to show that any objective and significant uncertainty regarding the implications of the Treaty provisions concerning citizenship of the Union which entered into force on 1 November 1993 had led its national authorities to adopt practices which did not comply with those provisions.

55 Consequently, there are no grounds for limiting the effects of the present judgment in time.

Costs

56 The costs incurred by the Belgian, Danish, French, Portuguese and United Kingdom Governments and by the Council and Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Tribunal du travail de Nivelles by judgment of 7 May 1999, hereby rules:

Articles 6 and 8 of the EC Treaty (now, after amendment, Articles 12 EC and 17 EC) preclude entitlement to a non-contributory social benefit, such as the minimex, from being made conditional, in the case of nationals of Member States other than the host State where they are legally resident, on their falling within the scope of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on the freedom of movement for workers within the Community when no such condition applies to nationals of the host Member State.

Rodríguez Iglesias	Gulmann	Wathelet
Skouris	Edward	Jann
Sevón	Schintgen	Macken

Delivered in open court in Luxembourg on 20 September 2001.

R. Grass
Registrar

G.C. Rodríguez Iglesias
President